



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

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B-176913

January 5, 1973

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Dear Mr. Secretary:

Reference is made to letter SUP 02E of September 15, 1972, from the Deputy Commander, Procurement Management, Naval Supply Systems Command, reporting on the protest of Satellite Computer Service against the award of an indefinite quantity contract for automatic data processing services to Sci-Tek Incorporated under request for proposals (RFP) No. NO0140-73-R-0288, issued by the Naval Regional Procurement Office, Philadelphia.

This solicitation represents the second attempt to procure these services. The first attempt had resulted in a contract award to Satellite on June 2, 1972. However, that contract was terminated for the convenience of the Government by the contracting activity on June 30 in view of the fact that the solicitation had not correctly stated the Government's actual requirements and because clarifying discussions had been held only with Satellite to the exclusion of the other offerors. RFP No. NO0140-73-R-0288 was subsequently issued. Proposals were received from Satellite and Sci-Tek. Subsequent to opening and review of the proposals, Satellite was given the opportunity to review and change its proposal. No specific clarifications of the Satellite proposal were requested. Satellite made no changes. Sci-Tek was requested to clarify two items in its proposal. After this clarification, Sci-Tek was determined to have submitted the lower priced proposal. Award was made to that firm on August 28, 1972, for the total estimated cost of \$40,815.90 for the contract period ending June 30, 1973. On August 31, Satellite telephoned the buyer to inquire as to the status of the procurement and was informed that award had been made to Sci-Tek. The award was thereafter protested to our Office.

Satellite contends that award should have been made to it inasmuch as it was in fact the low offeror. This is so, it is maintained, because in determining Satellite's total offered price the procurement activity added a sum of \$11,890 for item 1 to the Satellite price for item 2 to arrive at a total estimated cost greater than Sci-Tek was determined to have offered after clarifications. The Satellite proposal, it is contended, offered item 1 at "no charge", and, consequently Satellite's total estimated cost was lower than that of Sci-Tek. The Satellite offer for item 1 was stated in its proposal as follows:

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<u>Item</u>		<u>Qty</u>	<u>Unit</u>	<u>U.P.</u>	<u>Total</u>
0001	RENTAL WITH MAINTENANCE OF ONE (1) DATA COMMUNICATIONS TERMINAL FOR THE PERIOD <u>Beginning with date of Con-</u> <u>tract THRU 30 June 1973</u>	10	MOS	\$	\$
					No Charge
	A. RENTAL - \$ 689 /MO.	6,890			No Charge
	B. MAINTENANCE - \$ 500 /MO.	5,000			No Charge"

Satellite allegedly entered these prices, while indicating there would be nonetheless no charge, because under the previous solicitation it had submitted only a total price for item 1 and had as a result been allegedly requested to itemize its maintenance and rental costs thereunder for Navy internal cost purposes. These itemized costs were then written into Satellite's terminated contract.

The contracting officer advises that he and the buyer interpreted the Satellite proposal as offering a price of \$11,890 for item 1. They regarded it as inconceivable that Satellite or any other prospective contractor would offer item 1 at no charge. The \$11,890 sum was identical to the cost figures in Satellite's terminated contract. Consequently, it was felt that the words "No Charge" could only mean that there were no other charges for item 1 beyond the monthly rental and maintenance charges. It was further believed that to conclude that an offeror would insert monthly prices for rental and maintenance and then extend these to 10-month totals when the item was, in fact, to be offered at no charge would be completely illogical. The contracting officer believes that his interpretation of Satellite's item 1 pricing was reasonable and that the protest should be denied, citing 47 Comp. Gen. 390 (1968).

We do not believe, under the circumstances of this case, that the reasoning of our decision at 47 Comp. Gen. 390 should be applied. There the solicitation had requested offers for new items. Several offerors offered both new and overhauled units. The protestant offered "OVERHAULED CERTIFIED" items at prices substantially below the offers for new items from the other offerors and roughly comparable to the prices offered for overhauled items. We held to be reasonable the contracting officer's interpretation of "overhauled certified" as meaning items other than new items, especially as there was nothing in the proposal to bring the protestant's special meaning of these words to the attention of the contracting officer. The protestant had used "overhauled certified" to mean new items in storage inspected before delivery.

Other than that the solicitation had requested offers on new items and the protestant's offer was not specifically for such, there was nothing in the protestant's proposal to indicate that new items were being offered. At best, the ambiguity in meaning for the words "overhauled certified" was latent rather than inherent. The protestant had been requested to verify its proposal, but no specific area to be clarified had been indicated.

Under the facts of this case, the ambiguity created by Satellite was patent upon the face of the proposal. Whereas in our decision at 47 Comp. Gen. 390, nothing in the offeror's proposal provided any indication that the description "overhauled certified" meant something more than an overhauled item, we believe that the Satellite proposal was sufficient to indicate an ambiguity as to whether the offeror intended "no charge" or a price of \$11,890 for item 1. When Satellite was provided an opportunity to review the proposal after it was received, the discrepancy in the proposal should have been brought to its attention for resolution rather than assuming that the prices for item 1 were intended and that "no charge" was not. That is what is required by ASPR 3-804 which provides:

"* * * Complete agreement of the parties on all basic issues shall be the objective of the contract negotiations. Oral discussions or written communications shall be conducted with offerors to the extent necessary to resolve uncertainties relating to the purchase or the price to be paid.* * *"

In our view, the failure to conform to the negotiation requirements in this case was so material a deviation as to call for reopening of negotiations with both Sci-Tek and Satellite for any agency requirements estimated to be remaining in the contract period. If, as a result of such negotiations, the Satellite proposal is found to be the best offer, then the Sci-Tek contract should be terminated for the convenience of the Government and a contract for the remaining term should be awarded to Satellite. See B-175968, October 17, 1972.

As this decision contains a recommendation for corrective action to be taken, your attention is directed to section 236 of the Legislative Reorganization Act of 1970, 84 Stat. 1140, 1171, which requires that you submit written statements to certain committees of the Congress as to the action taken. The statements are to be sent to the Committees on Government Operations of both Houses not later than 60 days after

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the date of this decision and to the Committees on Appropriations in connection with the first request for appropriations made by your agency more than 60 days after the date of this decision.

Sincerely yours,

R.F.KELLER

[Deputy Comptroller General
of the United States

The Honorable
The Secretary of the Navy